

### REMARKS

Claims 13, 18, 69 to 203, 205 to 208, and 214 to 235 are pending in the application. Claims 204, and 209 to 213 have been cancelled. Claims 78-85, 121, 156-160, 205, and 230-235 have been amended. No new matter is believed added.

It is noted that this application has already been allowed once, and the issue fee paid. Applicants submit herewith a Notice of Appeal should the Examiner not provide Applicants with a Notice of Allowance for the claims as amended and remaining in the Application. It is believed that all of the Examiner's remaining concerns and rejections have been addressed.

#### **Rejections Under 35 U.S.C. § 112, second paragraph**

The Office rejected claims 78-85, 93-168 and 230 to 235 under 35 USC §112, 2<sup>nd</sup> paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regards as the invention. Applicants respectfully traverse this rejection.

The Examiner comments that the language used in not standard "Markush" language "from the group consisting of....", and "thus it is unclear if in 78-85, 31, 233, 235 salts refer to the last compound listed, or to all". Further, the Examiner comments on the "and" term in claims 230 -235.

Claim 121 has been amended to insert the "in" as noted by the Examiner.

The use of "selected from" language is an acceptable format to claim a Markush grouping of objects. However, in order to advance prosecution, Applicants have amended Claims 230 to 235 accordingly. Additionally, claims 78, 79, 82-85, 156-160 have been amended similarly.

Claims 78-81 have been amended to remove or clarify the term metal salts as noted by the Examiner.

In view of these remarks and amendments, reconsideration and withdrawal of the rejection to the claims under 35 USC §112 is respectfully requested.

### **Obviousness-Type Double Patenting Rejections**

The Office has provisionally rejected claims 13, 70 to 205, and 219 to 235 on the ground of nonstatutory obviousness –type double patenting over claims 1-58 of copending application USSN 09/681,055. Applicants respectfully traverse this rejection.

USSN 09/681,055 is not a copending application of Applicants. However, USSN 10/681,055 is a related application.

It is believed that this rejection is rendered moot as USSN 10/681,055 has now gone abandoned. Therefore, reconsideration and withdrawal of the rejection to the claims is respectfully requested.

The Office has also rejected claims 13, 18, 69-130, and 141 to 218 as being unpatentable over claims 1, 13, 15 to 19, 21, 23 to 44, 60, 61 and 68 to 80 of U.S. Patent No. 6,75605. Applicants respectfully traverse this rejection.

It is believed that the Examiner is referring to US Patent No. 6,756,057, e.g., USSN 10/462,066, asserting that the presently recited claims are to instant dosage forms, of the same material and ratio of ingredients, [and] so would provide the same results, thus are self evident to the artisan, even though the claim language differs as to the specific amount and parameters of effects recited. “ See Action at 2, ¶ 6 . Although Applicants continue to believe that the present claims are patentably distinct over the recited claims in the Applicants US Patent No. 6,756,057, a terminal disclaimer is submitted herewith to facilitate allowance of the application.

The Office maintains their rejection of claims 204, and 209 to 213 as being unpatentable over claims 1-18 of U.S. Patent Nos. 6,136,345 or 6,358,528 to Grimm [sic, Grimmett] in view of PDR and U.S. Patent No. 6,214,359 to Bax. Applicants respectfully traverse this rejection.

In order to further prosecution on the merits, Applicants have cancelled these claims and will continue prosecution of them in a continuation application.

Accordingly, Applicants believe that the present claims are patentable in view of these patent documents and respectfully requests that the Office withdraw each of these rejections.

### **Rejections Under 35 U.S.C. § 102**

The Office appears to have removed the rejections to the pending claims under Section 102 for all but Claim 204. As this claim has now been cancelled it is believed to render any remaining rejections moot.

Claim 205 is stated as being allowable if amended to include the acids recited in claim 223 and the release excipients of claim 156. While Applicants disagree that this is necessary to show patentable distinction over the prior art the claim has been amended accordingly.

### **Conclusion**

As set forth above, Applicants have addressed the Office's rejections under Section §112 by amendment and/or further explanation, the rejections of obviousness-type double patenting by either the submission of Terminal Disclaimers or an explanation of why a Terminal Disclaimer is not needed, and the rejections under Section 102/103 by focusing the Office's attention on certain claim limitations. In light of the foregoing, Applicants respectfully request the issuance of a Notice of Allowance on the claims as presently in the application.

Should the Examiner have any questions or wish to discuss any aspect of this case, the Examiner is encouraged to call the undersigned at the number below. It is not believed that this paper should cause any additional fees or charges to be required, other than expressly provided for already. However, if this is not the case, the Commissioner is hereby authorized to charge Deposit account 19-2570 accordingly.

Respectfully submitted,



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